

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : CRIMINAL NO. _____

v. : DATE FILED: _____

MARK C. WEST	:	VIOLATIONS:
		18 U.S.C. § 1033(b)(1)(A) (insurance fraud - 1 count)
	:	18 U.S.C. § 1341 (mail fraud - 4 counts)
	:	18 U.S.C. § 2 (aiding and abetting)
		Notice of forfeiture

INDICTMENT

COUNT ONE

THE GRAND JURY CHARGES THAT:

At all times material to this indictment:

1. The General American Life Insurance Company (“GenAmerica”) was a for profit company engaged in the business of selling various types of insurance, including life insurance.

2. GenAmerica was a wholly-owned subsidiary of the Metropolitan Life Insurance Company.

3. Defendant **MARK C. WEST** was the President and Chief Executive Officer of the West Corporation, located at 100 Four Falls Corporate Center, Suite 209, West Conshohocken, Pennsylvania.

4. Through the West Corporation, defendant **MARK C. WEST** was in the business of selling insurance products to companies and individuals, and providing estate planning and other business services.

5. Among other things, defendant **MARK C. WEST** served as an independent insurance agent for GenAmerica, and was authorized to sell various insurance products, including whole life insurance policies, for GenAmerica.

6. A whole life insurance policy is similar to a traditional term life insurance policy in that the policy will pay a death benefit upon the death of the insured person. Unlike a term life insurance policy, however, part of the premium payment for a whole life insurance policy is applied towards equity value in the policy. In other words, a whole life insurance policy builds equity as premiums are paid.

7. The equity value in a policy earns interest, also known as dividends, or paid up additions. Over time, if not withdrawn, these dividends add to the equity value in a whole life insurance policy, and themselves may earn additional dividends. Alternatively, the insured may choose to withdraw or otherwise spend these dividends. For example, the insured may use the dividends to help pay for the annual insurance premium payment for a whole life insurance policy. By doing so, however, the insured reduces the potential of the policy to earn additional dividends.

8. An insured may also take out a loan against the equity value of a whole life insurance policy. If the insured borrows against the policy, the insured must pay interest on the loan, and any loan interest that is not paid off is ultimately capitalized as a loan.

9. Because whole life insurance policies have equity value, if the insured fails to pay some or all of a premium payment, the coverage on the policy will not necessarily lapse. Instead, the policy will generate an automatic policy loan against the equity in the policy to pay the premium, and therefore maintain insurance coverage. Again, the insured must pay interest on

any automatic policy loans.

10. In 1982, on behalf of GenAmerica, defendant **MARK C. WEST** sold approximately 92 company-owned whole life insurance policies (the “Policies”) to the Pep Boys Corporation (“Pep Boys”) to insure the lives of Pep Boys executives and other employees. The Policies are divided into three groups, with annual premium payments due in December, January and June of each year.

11. Defendant **MARK C. WEST** has been the agent of record for the Policies since they were first purchased by Pep Boys. Moreover, since that time, the defendant has managed activity with respect to the Policies on behalf of Pep Boys.

THE SCHEME

12. In or about September 1992, Pep Boys requested that defendant **MARK C. WEST** and the West Corporation serve as the address of record for the Policies. As a result of this authorization, GenAmerica sent all copies of correspondence, including account statements, billing statements, and loan notices concerning the Policies only to the defendant, in care of Pep Boys.

13. Instead of forwarding the original GenAmerica billing statements and loan notices to Pep Boys, defendant **MARK C. WEST** generated self-prepared billing statements and loan notices on West corporate letterhead, and provided those documents to Pep Boys.

14. In turn, Pep Boys sent all payments for the Policies, in the form of a check made payable to defendant **MARK C. WEST** or the West Corporation, directly to the defendant instead of to GenAmerica.

15. On several occasions, Pep Boys did take out policy loans against the equity

value of the policies, but with respect to each policy loan, Pep Boys paid to defendant **MARK C. WEST** the full amount of loans and interest due. It was also the practice of Pep Boys to pay the full amount of premium due.

16. Defendant **MARK C. WEST** accepted the payments from Pep Boys for insurance premiums, loan repayments, loan interest and other amounts due, and deposited those monies into a West Corporation bank account.

17. On numerous occasions, however, defendant **MARK C. WEST** failed to forward to GenAmerica the entire amount paid by Pep Boys, and instead misappropriated all or a portion of Pep Boys' payments for his own use.

18. Defendant **MARK C. WEST** was not authorized by Pep Boys or GenAmerica to keep any portion of the Pep Boys' payments, and was required to forward the entire payment by Pep Boys to GenAmerica. The defendant was not entitled to receive any compensation from Pep Boys for managing the Policies because his compensation was from sales commissions and sales bonuses that were paid separately by GenAmerica.

19. To prevent the Policies from lapsing because of shortfalls in premium payments caused by defendant's misappropriations, and to conceal his scheme to defraud, defendant **MARK C. WEST** caused GenAmerica to make up any shortfall in the Pep Boy's premium payments by generating a policy loan against the equity value of the Policies, and by withdrawing dividends that had built up in the Policies. Pep Boys did not authorize the defendant to generate these policy loans or surrender dividends from the Policies to make up any shortfall in premium payments.

20. It was the practice of Pep Boys not to surrender dividends from the

Policies.

21. Defendant **MARK C. WEST** victimized GenAmerica for an aggregate loss of approximately \$3.6 million.

22. From in or about December 1997 through in or about July 2004, defendant

MARK C. WEST,

being an agent of GenAmerica, an organization engaged in the business of insurance whose activities affect interstate commerce, wilfully embezzled, abstracted, purloined and misappropriated money, funds, premiums, credits and other property of GenAmerica in the approximate amount of \$3.6 million.

In violation of Title 18, United States Code, Section 1033(b)(1)(A).

COUNTS TWO THROUGH FIVE

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 21 of Count One are incorporated herein.
2. From in or about December 1997 through in or about July 2004, defendant

MARK C. WEST

devised and intended to devise a scheme to defraud Pep Boys and GenAmerica, and to obtain money and property by means of false and fraudulent pretenses, representations and promises.

3. On or about the dates listed below, in West Conshohocken, Pennsylvania, in the Eastern District of Pennsylvania, and elsewhere, defendant

MARK C. WEST,

for the purpose of executing the scheme described above, and attempting to do so, knowingly caused to be delivered by commercial interstate carrier, according to the directions thereon, the following matter, all of which were checks from the West Corporation to GenAmerica for less than the full amount paid by Pep Boys to the West Corporation, when, in fact, defendant **WEST** was not permitted to keep any portion of the Pep Boys' payments:

Count	Date	Transaction	Delivery Address	Delivery Means
2	2/27/01	West sends to GenAmerica West Corporation check number 1519 for \$927,506.60	General American 13045 Tesson Ferry Rd St. Louis, MO 63128	Federal Express
3	8/23/01	West sends to GenAmerica West Corporation check number 1820 for \$366,215.54	General American 13045 Tesson Ferry Rd St. Louis, MO 63128	Federal Express

4	8/5/03	West sends to GenAmerica West Corporation check number 1453 for \$342,656.16	General American 13045 Tesson Ferry Rd St. Louis, MO 63128	Federal Express
5	2/5/04	West sends to GenAmerica West Corporation check number 1760 for \$1,000,659.90	General American 13045 Tesson Ferry Rd St. Louis, MO 63128	Federal Express

All in violation of Title 18, United States Code, Sections 1341 and 2.

NOTICE OF FORFEITURE

THE GRAND JURY FURTHER CHARGES THAT:

1. As a result of the violations of Title 18, United States Code, Section 1341, set forth in this indictment, defendant

MARK C. WEST

shall forfeit to the United States of America any property, real or personal, that constitutes or is derived from proceeds traceable to the commission of such offenses, including, but not limited to, the sum of \$3.1 million.

2. If any of the property subject to forfeiture, as a result of any act or omission of the defendant:

- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred or sold to, or deposited with, a third party;
- (c) has been placed beyond the jurisdiction of the Court;
- (d) has been substantially diminished in value; or
- (e) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 28, United States Code, Section 2461(c), incorporating Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendant up to the value of the property subject to forfeiture.

All pursuant to Title 28, United States Code, Section 2461(c) and Title 18, United States Code, Section 981(a)(1)(C).

A TRUE BILL:

FOREPERSON

PATRICK L. MEEHAN
UNITED STATES ATTORNEY